

## Calling all agents: The rise of collective sales in strata schemes and the benefits of having an agent involved

**The increasing demand for housing has seen a rise in the redevelopment of small strata scheme sites into larger-scale developments. Developers will often approach strata lot owners individually with offers to buy their respective lots with a view to buying all lots within the strata scheme and re-developing the site.**

More and more owners of lots in strata schemes are considering the potential benefits of selling their lots to a developer. In the last few years, we have been approached by a large number of lot owners who have agreed to band together as a group and sell their lots collectively (known as a collective sale) which enables them to achieve a much higher purchase price for their respective lots and the ability to negotiate more favourable terms in their agreement to sell to a developer. This, in turn, is also more favourable to a developer than trying to negotiate separate agreements for potential sale with individual lot owners.

The agreements for potential sale of lots in a strata scheme usually take the form of a “Put and Call” or “Call” Option Agreement, by which the developer may opt to purchase the lots over a period of time. This period of time, known as the “option period,” allows the developer to seek and obtain development and other approvals for the site before exercising the option to proceed to purchase of the lots.

### What is a co-owners agreement and why is it useful?

An essential preliminary step in the collective sale process is having lot owners enter into a co-owners agreement. This is a written agreement between the lot owners in the strata scheme which sets out the broadly agreed terms of the sale, including but not limited to a minimum sale price, division of the sale price between the various lot owners, obligations relating to estate-planning and any other relevant considerations.

This agreement is a useful tool, not only to establish the basic terms which are acceptable to all lot owners and that they agree to be held to, but also to evidence to a developer that the owners have agreed to the collective sale in principle, prior to the negotiation of further, more detailed terms and a form of collective sale agreement.

### What is a Put and Call or Call Option Agreement?

A collective sale agreement is often in the form of a “Put and Call” or “Call” Option Agreement. This is an agreement between a lot owner and a developer which gives the developer the option to purchase the lot by a specified date. The developer usually pays a substantial option fee to the lot owners for the grant of the option. If the developer exercises the option in time, the parties enter into a contract to sell the lot. If the developer does not exercise the option in time, the option lapses, and the owners keep the option fee. A put and call option agreement provides that if the developer does not exercise

the call option, the lot owners can “put” the lot to the developer, so that the developer is legally obliged to enter into the contract to purchase the lot.

The option agreement will usually have a longer term than a standard sale contract. This provides the developer with time to make a development application prior to entering into the contracts to purchase the lots. If the development application is not approved, the developer will almost certainly decide not to exercise the option to purchase. The option fee will then be forfeited to the lot owners.

### How can an agent help?

Lot owners in a strata scheme may be able to identify the benefits of selling their lots together, but often lack the ability to facilitate and negotiate favourable sale terms with a potential developer.

An agent with specialist knowledge of the collective sale process and demonstrated experience in tendering strata scheme sites to developers can be of great assistance to lot owners considering a collective sale, not only in conducting the necessary marketing campaign, but also contacting and liaising with developers, negotiating commercial terms on behalf of the owners and, where necessary, assisting with the engagement of other consultants such as surveyors and valuers.

Noting the collective sale process may require considerable involvement from an agent and is still relatively specialised, the potential amount of commission payable to an agent is worth consideration.

### Conclusion

If you have experience as an agent in the collective sale process, or if you would like to know more about how to capitalise on the opportunities afforded by the collective sale process, please contact our strata team at Speirs Ryan. We have substantial experience in transactions of this nature and are well-placed to assist agents and lot owners with the collective sale process.

*Speirs Ryan is a boutique property law firm with national coverage. The firm is uniquely placed with specialist teams in both property transactions and strata law.*

*Disclaimer: This article is a general summary with focus on issues of interest to the authors. It is not intended to be used as legal advice.*